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Supreme Court of the United States

No. [redacted] 16

SAMUEL R. TOUCEY, PETITIONER,

VS.

NEW YORK LIFE INSURANCE COMPANY, A CORPORATION, RESPONDENT.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I. Certiorari having been denied by this court from the decree of the circuit court of appeals upon the first appeal, and that court upon the second appeal having made the same ruling as it did before upon precisely the same grounds, and having found that the issues upon the second appeal were the same as those upon the first, there is no new ground presented to this court for certiorari and the petition should be denied 3

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Supreme Court of the United States

No. 587.

SAMUEL R. TOUCEY, PETITIONER,

VS.

NEW YORK LIFE INSURANCE COMPANY, A CORPORATION, RESPONDENT.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The original opinion in the Circuit Court of Appeals for the Eighth Circuit is reported in 102 F. 2d 16 Toucey applied for certiorari to this court. It was denied March 29, 1939 (307 U. S. 638). The first appeal was from a preliminary injunction; the second appeal was taken by Mr. Toucey from the final decree. The opinion of the Circuit Court of Appeals for the Eighth Circuit on that appeal is reported in 112 F. 2d 927. The gist of the Circuit Court of Appeals' second opinion is that no new issues were presented differing from those upon the first appeal and, therefore, the final decree below was affirmed upon the same grounds on which the preliminary injunction was affirmed.

Upon the first petition for a writ of certiorari, the cause was numbered 897 in this court.

SUMMARY OF THE ARGUMENT.

I.

Certiorari having been denied by this court from the decree of the circuit court of appeals upon the first appeal, and that court upon the second appeal having made the same ruling as it did before upon precisely the same grounds, and having found that the issues upon the second appeal were the same as those upon the first, there is no new ground presented to this court for certiorari and the petition should be denied.

II.

The application does not conform to Rule 38 of the Revised Rules of this court adopted February 13, 1938.

STATEMENT AND ARGUMENT.

I.

Certiorari having been denied by this court from the decree of the circuit court of appeals upon the first appeal, and that court upon the second appeal having made the same ruling as it did before upon precisely the same grounds, and having found that the issues upon the second appeal were the same as those upon the first, there is no new ground presented to this court for certiorari and the petition should be denied.

This case was carefully considered by the Circuit Court of Appeals for the Eighth Circuit and a full and able opinion written. See *Toucey* v. *New York Life Insurance Company*, 102 F. 2d 16. Competent counsel applied to this court for a writ of certiorari upon two grounds as this court will see by referring to the original petition (cause No. 897).

The first ground was: "Do the provisions of Section 379, Title 28, U. S. C. A., Section 265, Judicial Code, prohibit a federal court from staying proceedings in an action *in personam* pending in a state court?"

The second question presented in the petition was: "Does a court of equity, upon determining the equitable issues adversely to the petitioner, lose jurisdiction to adjudicate legal issues?"

Respondent's brief in opposition to the petition for certiorari met the first point raised with the following argument:

> Section 379, Title 28, U. S. C. A., Section 265, Judicial Code, does not prevent a federal district court from granting an injunction against proceedings in a state court where such injunction is neces-

> sary to protect and effectuate the pre-existing final decree of the district court rendered in equity and to prevent the relitigation of the issues settled by that decree.

Respondent's response to petitioner's second point was as follows:

> The decree of the district court in equity was a final and proper adjudication that Toucey was not totally and permanently disabled and that issue cannot be relitigated in the state court.

Petitioner's chief reliance under his first point was on *Kline* v. *Burke Construction Co.*, 260 U. S. 226, 67 L. Ed. 226, 24 A. L. R. 1077, 43 S. Ct. 79. The Circuit Court of Appeals clearly distinguished that case, citing several decisions of this Court which we cited in respondent's brief in opposition to the petition for certiorari. This court, on the 29th day of March, 1939, denied the petition.

The final decree was issued by the District Court in favor of the New York Life Insurance Company, from which Mr. Toucey took a second appeal which was decided by the Circuit Court of Appeals on June 29, 1940. The motion for rehearing was denied July 22, 1940. In affirming the final decree below, this Court said in part (*Toucey* v. *New York Life Insurance Company*, 112 F. 2d 926, l. c. 928):

> There has been no change in the evidence in this case and no change in the controlling authorities since our previous decision. It is therefore apparent that the only possible basis for overruling that decision and for reversing the decree appealed from would be that the decision on the former appeal was clearly erroneous and that adherence to it would work a manifest injustice. We are convinced that the former decision of this court in this case was right, for the reasons therein stated. Compare *Hesselberg* v. *Aetna Life Ins. Co.*, 8 Cir., 102 F. 2d 23, 27.

The only part of petitioner's typewritten petition here which need be mentioned or which has any bearing is that part beginning on page 30 and ending at the bottom of page 33 and that part beginning on page 41 and ending on page 48. If the matter set forth on those pages be compared with petitioner's original petition and brief in cause No. 897, it will be found that the grounds and subject matter are substantially identical. If the Court will refer to respondent's brief in opposition to the original petition for writ of certiorari, it will find that these arguments were fully answered there.

The first 29 pages of the petition are a series of incoherencies and do not relate to anything in the record on appeal or to any possible ground for certiorari.

It is therefore submitted that this Court, having denied certiorari once, should not entertain application for it again upon identical grounds.

II.

The application does not conform to Rule 38 of the Revised Rules of this court adopted February 13, 1938.

Rule 38 of the Revised Rules of this Court provides, among other things, that a petition for a writ of certiorari shall contain a summary and short statement of the matter involved. It provides (paragraph 5) that the writ will only be granted "where there are special and important reasons therefor." The petitioner's purported petition does not contain a summary and short statement of the matter involved but is a long, verbose document containing innumerable, unfounded charges in no way relating either to anything contained in the printed record or to anything done or omitted by the Circuit Court of Appeals. There cannot be any "special and important reasons" in this case for the granting of the writ because the identical matter has already been decided by this Court on a previous petition and has been passed upon twice by the

District Court and twice by the Circuit Court of Appeals for the Eighth Circuit with the same result in every instance.

Some of the matter contained in the petition is not only unfounded in the record but is scandalous.

CONCLUSION.

For these reasons it is respectfully submitted that the petition should be denied.

Respectfully submitted,

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